

April 16, 2019

The Honorable Leslie Kobayashi
US District Court
District of Hawaii
PJKK Federal Building
Honolulu, HI 96813

Re: *Hawaii Central Federal Credit Union v. Louis Mahina Kealoha, et al.*,
Civil No. 18-00108 LEK-KIM

Dear Judge Kobayashi:

We are the holder of a second mortgage on the subject property and have in that capacity asserted an interest in the subject property. Pursuant to an order entered by Judge Seabright in Cr. No. 18-00068 JMS-RLP, the subject property was sold and the net proceeds deposited with the clerk of the court. See attached *FINAL ORDER GRANTING INTERESTED PARTY HAWAII CENTRAL FEDERAL CREDIT UNION'S MOTION FOR CONFIRMATION OF INTERLOCUTORY SALE OF REAL PROPERTY, ECF NO. 139* filed therein.

Pursuant to the said order, the net proceeds:

... will be substituted for the above-described Real Property ("substitute res") and paid by Escrow to the Clerk of Court for the United States District Court for the District of Hawaii to be held in an interest-bearing account pending a final judgment in this action.

Order at 6, ¶ 4.

Further the liens and claims of the parties are henceforth to be made upon the substitute res, and those claims will be determined "in an ancillary proceeding contingent upon and following a judgment in the said criminal case and the Court's entry of a final order of forfeiture to the United States." Order at 6-7, ¶ 5.

The court in Cr. No. 18-00068 JMS-RLP retained jurisdiction of the substitute res pending further proceedings. Order at 7, ¶ 5.

Accordingly, it appears that the foreclosure case presided over by Your Honor has been deprived of the subject of the litigation, and the substitute res now is presently under the jurisdiction of Judge Seabright in Cr. No. 18-00068 JMS-RLP, subject to disposition in a subsequent ancillary proceeding.

The Honorable Leslie Kobayashi
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Thank you for your attention to this matter.

Very truly yours,

SUMIDA AU & WONG, LLC

By: /s/ KEVIN P.H. SUMIDA
KEVIN P.H. SUMIDA

Enclosure

cc: Counsel and Parties on the attached Certificate of Service (with enclosure)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KATHERINE P. KEALOHA (1),
LOUIS M. KEALOHA (2),

Defendants.

CR. NO. 18-00068 JMS-RLP

FINAL ORDER GRANTING
INTERESTED PARTY HAWAII
CENTRAL FEDERAL CREDIT
UNION'S MOTION FOR
CONFIRMATION OF
INTERLOCUTORY SALE OF REAL
PROPERTY, ECF NO. 139

**FINAL ORDER GRANTING INTERESTED PARTY HAWAII CENTRAL
FEDERAL CREDIT UNION'S MOTION FOR CONFIRMATION OF
INTERLOCUTORY SALE OF REAL PROPERTY, ECF NO. 139**

Interested Party HAWAII CENTRAL FEDERAL CREDIT UNION's ("HCFCU") MOTION FOR CONFIRMATION OF INTERLOCUTORY SALE OF REAL PROPERTY, ECF No. 139, (the "Motion") was heard on March 13, 2019, after notice to all parties on February 19, 2019, ECF No. 140. Special Attorneys Janaki S. Gandhi, Colin M. McDonald and Michael G. Wheat appeared for the United States; Cynthia A. Kagiwada appeared for Defendant Katherine P. Kealoha; Rustam Barbee appeared for Defendant Louis M. Kealoha; and Jonathan W.Y. Lai appeared for HCFCU. Interested party Sumida, Au & Wong, LLC did not appear.

Based upon the Motion, the declarations and exhibits filed in support, the records and files of this action, the representations made before the Court on March 13, 2019, and there being no objections, the Court finds that:

1. Three disinterested appraisers appraised the fair market value of that certain real property situated at 7014 Niimalu Loop, Honolulu, Hawaii 96825, Tax Map Key No. (1) 3-9-065-046 (the “Real Property”). There being no objection to said appraisals, this Court approved them via its Order Regarding HCFCU’s Submitted Declaration of Counsel, dated October 31, 2018, ECF No. 119;

2. Heidi Ho, the licensed real estate agent retained by HCFCU (the “Real Estate Agent”) pursuant to the Order Granting the United States’ Motion for Interlocutory Sale of Real Property Subject to Criminal Forfeiture (the “Interlocutory Order”), ECF No. 79, listed the Real Property for sale at a price not less than two-thirds of the average of the three appraised values;

3. The Purchaser thereafter agreed to pay the cash price of ONE MILLION THREE HUNDRED FIVE THOUSAND AND NO/100 DOLLARS (\$1,305,000.00) (the “Purchase Price”) with no financing contingencies (the “Contract”);

4. The United States was given written notice of the Contract electronically and stated no objection;

5. The terms of the Contract are just and proper under the circumstances;

6. The terms of the Contract have been published in a newspaper of general circulation at least ten days prior to the confirmation of the sale, as reflected in that certain Affidavit of Publication, filed herein on February 27, 2019, ECF No. 142;

7. No other offers were made thereafter; and

8. During a hearing for confirmation of the sale on March 13, 2019, this Court made three calls for anyone present to bid on the Real Property and no overbids were received.

9. On March 18, 2019, the court entered an Order Granting Interested Party Hawaii Central Federal Credit Union's Motion for Confirmation of Interlocutory Sale of Real Property (the "Preliminary Order"). ECF No. 153.

10. The Preliminary Order listed certain fees and costs associated with the Interlocutory Sale of the Real Property, the amounts of which had not been determined at that time. As such, the Preliminary Order stated with regard to those items, that the amounts were "to be determined and approved by the Court at a later date."

11. The Preliminary Order then stated that "[a] Final Order will be entered prior to closing, incorporating those fees and costs listed above that have yet to be determined, in accordance with the Interlocutory Order and as the Court

approves, and incorporating the final total payoff amount to HCFCU, calculated as of the closing date.”

12. On March 27, 2019, HCFCU filed its Fourth Supplemental Declaration of Counsel (the “Fourth Declaration”), ECF No. 155, providing amounts for those items previously listed as “to be determined” and updating other cost items with additional amounts and providing documentary support for said items.

This Court having approved the items lists in the Fourth Declaration and incorporated them into the items already listed in the Preliminary Order, it is therefore ORDERED, ADJUDGED and DECREED that:

1. The Motion is GRANTED and the Contract is approved, ratified and confirmed. The sale is “as is” and shall be without warranties. Upon receipt of the full Purchase Price, HCFCU and/or the United States Marshals Service (“USMS”) are ordered and directed to convey the Real Property by way of quitclaim deed to the Purchaser or her written nominee.

2. Out of the sum of \$1,305,000.00 received from the Real Property sale, Title Guaranty of Hawaii, Inc. (“Escrow”) shall disburse the funds according to the Interlocutory Order. Escrow shall immediately pay any outstanding real property taxes and the expenses of custody and sale incurred by the USMS first and thereafter by HCFCU, as follows:

- a. the sum of \$1,080.00 to the USMS for costs incurred in conducting a lien and appraisal report;
- b. the sum of \$52,609.75 for all reasonable costs incurred in connection with the maintenance, repair, marketing, and sale of the Real Property;
- c. the sum of \$1,827.09 for the cost of the appraisals;
- d. the Real Estate Agents' combined commission of no more than 6% of the Purchase Price, in the amount of \$78,300.00;
- e. reimbursement to the Real Estate Agent for the cost of publication in the amount of \$370.68;
- f. Insurance costs in the amount of \$2,388.97;
- g. Escrow fees, advances and late charges in the amount of \$1,591.62;
- h. Document recording fees not paid by the Buyer in the amount of \$41.00;
- i. Title fees in the amount of \$2,640.00;
- j. County transfer taxes in the amount of \$3,915.00;
- k. Mariner's Cove Association Dues in the amount of \$100.22;
- l. Sewer fees paid to Hawaii American Water Co. in the amount of \$41.74;

m. The sum of \$1,099,096.60, the balance owed under the Note and Mortgage, calculated to March 29, 2019, as follows:

Principal Balance:	\$1,021,482.11
Interest to 3/29/19 (3.75%):	60,396.86
Escrow/Impound Overdraft:	13,123.69
Unpaid Late Charges:	4,093.94
Total:	\$1,099,096.60

along with interest accruing at the rate of 3.750% per year, which is currently \$104.95 per day, plus any accruing late charges and/or any further advances made by HCFCU in accordance with the Interlocutory Order, to be determined and approved by the Court, up to the date of escrow closing;

3. In the event that the sale proceeds are insufficient to pay all amounts due on the Note and the Mortgage including attorneys' fees and costs, HCFCU may seek a deficiency judgment against Defendants LOUIS MAHINA KEALOHA and KATHERINE ELIZABETH KEALOHA, jointly and severally;

4. After payments outlined in Paragraph 2 above are made, the remaining net proceeds from the sale of the Real Property will be substituted for the above-described Real Property ("substitute res") and paid by Escrow to the Clerk of Court for the United States District Court for the District of Hawaii to be held in an interest-bearing account pending a final judgment in this action.

5. All other right, title, claim, liens, and interest of any and all persons or parties whatsoever existing or asserted in said Real Property shall be made upon the substitute res. The validity and priority of any such right, title,

claims, liens, and interest will be determined at an ancillary proceeding pursuant to Title 21, United States Code, Section 853(n), contingent upon and following a judgment in the criminal case and the Court's entry of a final order of forfeiture to the United States. If Defendants Katherine P. Kealoha and Louis M. Kealoha are found not guilty of the charges contained in Counts 1 through 8 of the Second Superseding Indictment, the Court will retain jurisdiction of the substitute res pending further proceedings.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, March 29, 2019.



/s/ J. Michael Seabright
J. Michael Seabright
Chief United States District Judge

United States v. Kealoha, et al.; Cr. No. 18-00068 JMS-RLP; Final Order Granting Interested Party Hawaii Central Federal Credit Union's Motion for Confirmation of Interlocutory Sale of Real Property, ECF No. 139

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

HAWAII CENTRAL FEDERAL
CREDIT UNION,

Plaintiff,

vs.

LOUIS MAHINA KEALOHA;
KATHERINE ELIZABETH
KEALOHA; MARINER'S COVE
ASSOCIATION, a Hawaii nonprofit
corporation; LUNA-KAI MARINA
PARK ASSOCIATION, a Hawaii
nonprofit corporation; HAWAII KAI
MARINA COMMUNITY
ASSOCIATION, a Hawaii nonprofit
corporation; SUMIDA AU & WONG,
LLLC, a Hawaii limited liability
company; UNITED STATES OF
AMERICA; JOHN DOES 1-10; JANE
DOES 1-10; DOE PARTNERSHIPS 1-
10; DOE CORPORATIONS 1-10; DOE
ENTITIES 1-10; DOE
GOVERNMENTAL UNITS 1-10,

Defendants.

CIVIL NO. 18-00108-LEK-KJM
(FORECLOSURE)

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that, on the dates and by the methods of service noted below, a true and correct copy of the foregoing was served on the following at their last known addresses:

Served Electronically through CM/ECF:

Attorney	Email	Date of Service
JONATHAN W.Y. LAI, ESQ. 999 Bishop Street, #1250 Honolulu, Hawaii 96813 Attorney for Plaintiff HAWAII CENTRAL FEDERAL CREDIT UNION	jlai@wik.com	APR 16 2019
JOHN A. MORRIS, ESQ. RUSSELL H. ANDO, ESQ. 888 Mililani Street, 2 nd floor Honolulu, Hawaii 96813 Attorneys for Defendant MARINER'S COVE ASSOCIATION	jmorris@hawaiicondolaw.com rando@hawaiicondolaw.com	APR 16 2019
COLIN M. McDONALD, ESQ. ERIC J. BESTE, ESQ. JANAKI S. GANDHI, ESQ. MICHAEL WHEAT, ESQ. Office of the United States Attorney 880 Front Street, Room 6293 San Diego, California 92101 Attorneys for Defendant UNITED STATES OF AMERICA	Colin.McDonald@usdoj.gov Eric.Beste@usdoj.gov Janaki.Gandhi@usdoj.gov Michael.Wheat@usdoj.gov	APR 16 2019


Served by First Class Mail:

Name and Address	Date of Service
LOUIS MAHINA KEALOHA 4348 Waialae Ave., #829 Honolulu HI 96816 Defendant	APR 16 2019
KATHERINE ELIZABETH KEALOHA 4348 Waialae Ave., #829 Honolulu HI 96816 Defendant	APR 16 2019

Name and Address	Date of Service
LUNA-KAI MARINA PARK ASSOCIATION c/o Touchstone Properties, Ltd. 680 Iwilei Road, #777 Honolulu, Hawaii 96817 Defendant	APR 16 2019
HAWAII KAI MARINA COMMUNITY ASSOCIATION c/o Hawaiian Properties, Ltd. 1165 Bethel Street, 2 nd Floor Honolulu, Hawaii 96813 Defendant	APR 16 2019

DATED: HONOLULU, HAWAII,

4/16/19



KEVIN P. H. SUMIDA
Attorney for Defendant
SUMIDA AU & WONG, LLC